

MT LEGISLATIVE HISTORY

Chapter 63 1971

Bill H _____ S 139

Original bill & hist. NAC

H. Committee on Bus. Industry

S. Committee on Banking & Ins.

Hearing Date(s) _____ c

Hearing Date(s) _____ c

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2/15 ✓c

1/20 ✓c

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Date Out

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Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

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of Montana

January 20, 1971

The Committee on Banking and Insurance met on recess
January 20, 1971. A quorum was present.

Senator Stan Stephens, sponsor of Senate Bill 139, explained that this bill would protect a policyholder of an insurance policy in the event an insurance company should go bankrupt or insolvent. This bill would enable the insurance industry to guarantee its own performance. He further informed the committee that all insurance companies in Montana would become members of the insurance guaranty fund and would contribute to the fund so that if one of its members went insolvent, they could pay off the claims of the insolvent concern and protect the public; the fund would be handled by the board of directors of membered insureds.

Chadwick Smith, proponent of Senate Bill 139, and also speaking on behalf of Jack Risken, told the committee that the insurance companies support this bill as they want to hold themselves out as a good image to the public. Both of these gentlemen represent the American Insurance Association. He further stated that forty-nine states already have a similar bill and before this provision would be on a national level, he felt it best that this be tailored to individual state needs.

Senator Hazelbaker advised the committee that the agent for an insurance company would also be protected by this bill as he, at his own expense, has to replace coverage of a policyholder of an insolvent company for the remainder of the premium period.

Bob Corette and Riley Childers appeared before the committee as interested parties.

Proponents and interested people were dismissed from the committee in order that the committee members could consider action. Senator Groff moved to reconsider the action and the amendments of January 13, 1971. This motion was seconded by Senator Hazelbaker. After discussion and consideration, Senator Groff moved to withdraw that action which was taken on January 13, 1971 and this motion was seconded by Senator Goodheart and carried. Senator Hafferman then moved to adopt the amendments of January 20, 1971, which amendments were discussed this date. This motion was seconded by Senator Shea. Senator Hafferman then moved that Senate Bill 44 "Do Pass As Amended" and this motion was seconded and carried unanimously.

Senator Hazelbaker moved that Senate Bill 139 "Do Pass". Senator Broeder seconded this motion and it carried unanimously.

There being no further business before the committee, Senator Hazelbaker moved to adjourn, which motion was seconded and carried.

Senator Percy D. Wolfe - Chairman

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STANDING COMMITTEE REPORT

January 20, 1971

MR. PRESIDENT

We, your committee on **BANKING AND INSURANCE**

having had under consideration

SENATE

Bill No. 139

A BILL FOR AN ACT ENTITLED: "A BILL TO PROVIDE A GUARANTY ASSOCIATION FOR ALL INSURERS, TO PROTECT THE PUBLIC FROM INSURER INSOLVENCY AND PROVIDING FOR ASSESSMENT AMONG ASSOCIATION MEMBERS UNDER CERTAIN CONDITIONS."

SENATE

Bill No. 139

BUSINESS AND INDUSTRY COMMITTEE

February 15, 1971

The nineteenth meeting of the Business and Industry Committee was held Monday morning at 10:30 in Room 433-4 of the State Capitol Building with Chairman Worden presiding.

All members were present with the exception of Representatives Jackson, McGrath, Mehrens, Olson and Patrick.

Senate Bill 139 was presented by Senator Stephens, sponsor. Proponents were E. V. "Sonny" Omholt, State Auditor, and Chadwick H. Smith representing American Mutual Insurance Alliance. There were no opponents.

Proponents for Senate Bill 148 were E. V. "Sonny" Omholt, State Auditor, and Chadwick H. Smith, representing American Mutual Insurance Alliance.

Senate Bill 318 was presented by Senator Shea. Opponents were Chadwick H. Smith representing American Mutual Insurance Alliance and John H. Risken representing American Insurance Association.

Senate Bill 220 was presented by Senator Thiessen. Doyle B. Saxby representing the Department of Administration appeared as a proponent.

Action was then taken on the following bills:

SB139...Rep. Spilde moved DO PASS. Motion carried.

SB148...Rep. Eggebrecht moved DO PASS. Motion carried.

SB220...Rep. Nelstead moved DO PASS. Motion carried.

SB318...Rep. Burnett moved do pass. He then withdrew his motion in favor of passing for the day, which motion was carried.

The meeting adjourned at 11:25 A.M.

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of Montana


H. O. WORDEN, Chairman

- Fix prices.** time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the board shall deem advisable, provided, however, that such stores shall be closed for the transaction of business *between the close of normal business Saturday p.m. through the opening of normal business Tuesday a.m. as set by board regulation and including legal holidays, and election days.*"
- Determine business hours.**
- Mandatory closing.**
- Amending clause.** Section 2. Section 4-121, R.C.M., 1947, is amended to read as follows:
- Sales forbidden.** "4-121. **When sales of liquor forbidden.** No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor
- Holidays.** (a) on any holiday;
- National or state elections.** (b) on any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;
- Municipal elections.** (c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated;
- Other days.** (d) during such other period and on such other days as the board may direct."

Approved February 27, 1971.

CHAPTER NO. 63

A Bill to Provide a Guaranty Association for All Insurers, to Protect the Public from Insurer Insolvency and Providing for Assessment Among Association Members Under Certain Conditions.

Be it enacted by the Legislative Assembly of the State of Montana:

Montana insurance guaranty association act— Section 1. **Title.** This act shall be known and may be cited as the Montana insurance guaranty association act.

Purpose. Section 2. **Purpose.** The purpose of this act is to provide a mechanism for the payment of covered claims

under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

Section 3. **Scope.** This act shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage, guaranty and ocean marine insurance.

Application.

Section 4. **Construction.** This act shall be liberally construed to effect the purpose under section 2 which shall constitute an aid and guide to interpretation.

Liberal construction.

Section 5. **Definitions.** As used in this act, (1) "Association" means the Montana insurance guaranty association created under section 6 of this act.

Definitions.
"Association."

(2) "Commissioner" means the commissioner of insurance of this state.

"Commissioner."

(3) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due an reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

"Covered claim."

Exceptions.

(4) "Insolvent insurer" means (a) an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

"Insolvent insurer."

(5) "Member insurer" means any person who (a) writes any kind of insurance to which this act applies under section 3, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

"Member insurer."

(6) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to

"Net direct written premiums."

which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

Exception.

"Person."

(7) "Person" means any individual, corporation, partnership, association or voluntary organization.

Association created.

Authority to do business dependant on membership.

Section 6. **Creation of the association.** There is created a nonprofit unincorporated legal entity to be known as the Montana insurance guaranty association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 9 and shall exercise its powers through a board of directors established under section 7.

Board of directors.

5 to 9 persons.

Selection.

Approval.

Vacancies.

Section 7. **Board of directors.** (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

Appointment.

Fair representation.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

Expenses.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Section 8. **Powers and duties of the association.** (1) The association shall:

Obligations.

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the determina-

tion, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100) and is less than three hundred thousand (\$300,000), except that the association shall pay the full amount of any covered claim arising out of a workman's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

Limitations on amount.
\$100 to \$300,000.

Exceptions.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

Association deemed insurer.

(c) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 13 and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

Assessments.

Expenses and costs.

Determination of assessments.

Notice 30 days before due. Limitation.

2% of net premiums.

Exemption or deferment.

Setoff.

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| Duties regarding claims. | (d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. |
| Notices. | (e) Notify such persons as the commissioner directs under section 10 (2) (a). |
| Servicing facilities. | (f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer. |
| Reimbursements. | (g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act. |
| Employment of personnel. | (2) The association may: (a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association. |
| Loans. | (b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation. |
| Suits. | (c) Sue or be sued. |
| Contracts. | (d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act. |
| Other authority. | (e) Perform such other acts as are necessary or proper to effectuate the purpose of this act. |
| Refunds. | (f) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year. |
| Plan of operation. | Section 9. Plan of operation. (1) (a) The association shall submit to the commissioner a plan of operation |

tion and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

Approval.

(b) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

On failure to submit plan.

Commissioner shall promulgate rules.

(2) All member insurers shall comply with the plan of operation.

Compliance.

(3) The plan of operation shall: (a) Establish the procedures whereby all the powers and duties of the association under section 8 will be performed.

Plan shall establish procedures.

(b) Establish procedures for handling assets of the association.

Assets.

(c) Establish the amount and method of reimbursing members of the board of directors under section 7.

Reimbursement.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

Claims.

Notice.

(e) Establish regular places and times for meetings of the board of directors.

Meetings.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

Records.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal

Appeal.

to the commissioner within thirty (30) days after the action or decision.

Directors. (h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

Other provisions. (i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Plan may provide for delegation of powers and duties. (4) The plan of operation may provide that any or all powers and duties of the association, except those under section 8 (1) (c) and 8 (2) (b), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such

Reimbursement. a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Approval. Section 10. **Duties and powers of the commissioner.**

Duties of commissioner. (1) The commissioner shall: (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he receives notice of the determination of the insolvency.

Notice. (b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

Statements. (2) The commissioner may: (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

Powers. Require notice to insureds. (b) Suspend or revoke, after notice and hearing the certificate of authority to transact insurance in this state.

By mail.

Publication.

Suspend or revoke certificates of authority.

of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Any final action or order of the commissioner under this act shall be subject to judicial review in a court of competent jurisdiction.

Section 11. Effect of paid claims. (1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which

Levy fines.

Limitations.

Servicing facility.

Judicial review.

Assignment of rights.

Cooperation required.

Limitation—causes of action.

Settlements binding.

Priority of claims.

Expenses.

Statements of claims.

shall preserve the rights of the association against the assets of the insolvent insurer.

Section 12. Nonduplication of recovery. (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

Rights under policy.

Order of recovery.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Duty to inform of insolvency.

Section 13. Prevention of insolvencies. (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

Board may request examination.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying

Conduct.

Costs.

with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

Notice.

Release to public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

Duty of commissioner to report insolvency.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

Reports and recommendations.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

Insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

Report on insolvency.

Section 14. Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

Annual report.

Section 15. Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Tax exemption.

Section 16. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the associa-

Premium rates may allow for recoupment.

tion by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Immunity from liability.

Section 17. **Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

Stay of proceedings.

60 days.

Default judgments.

Application to set aside.

Defend on merits.

Section 18. **Stay of proceedings; reopening of default judgments.** All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

Approved February 27, 1971.

CHAPTER NO. 64

An Act to Provide for Control and Regulation of the Affairs of Insurance Holding Companies; Prescribe Rules and Regulations Governing Acquisition and Disposal of Insurance Holding Companies; Subjecting Domestic Insurers to Examination by the Insurance Department; Providing for Application to be Made to the Insurance Commissioner to Approve Certain Transactions; Providing for Judicial Review; Defining Terms; and Providing Penalties; Repealing Sections 40-5501 through 40-5508, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Definitions.** As used in this article, the following terms shall have the respective meanings herein-after set forth, unless the context shall otherwise require:

Definitions.

(a) **Affiliate.** An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

"Affiliate."
"Affiliated."

(b) **Commissioner.** The term "commissioner" shall mean the insurance commissioner, his deputies, or the insurance department, as appropriate.

"Commissioner."

(c) **Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 4 (i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

"Control."
"Controlling."
"Controlled by."
"Under common control with."

Presumption.

Rebuttal.

Determination by commissioner.

(d) **Insurance holding company system.** An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

"Insurance holding company system."

(e) **Insurer.** The term "insurer" shall have the same meaning as set forth in section 40-2603, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"Insurer."